

SENATE BILL 187

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2004 Regular Session  
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By: **The President (By Request - Administration)**  
Introduced and read first time: January 23, 2004  
Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 17, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Office of the Comptroller - Tax Compliance - Holding Companies**

3 FOR the purpose of authorizing the Comptroller to distribute, apportion, or allocate  
4 certain tax attributes between and among two or more organizations, trades, or  
5 businesses under certain circumstances; requiring that certain interest  
6 expenses and certain intangible expenses be added to the federal taxable income  
7 of a corporation to determine Maryland modified income under certain  
8 circumstances; requiring certain corporations under certain circumstances to  
9 include with an income tax return or otherwise file with the Comptroller a  
10 certain statement regarding certain dealings and transactions with related  
11 corporations; providing for a certain tax credit under certain circumstances;  
12 providing for a certain estimated payment; allowing the Comptroller to assess  
13 interest and penalty for failure to provide the required estimated payment;  
14 requiring the Comptroller to adopt certain regulations; defining certain terms;  
15 requiring the Comptroller to administer a certain Settlement Period during a  
16 certain period; providing for the applicability of the Settlement Period to certain  
17 corporation income taxes; requiring the Comptroller, during the Settlement  
18 Period, to waive certain penalties and to assess certain interest at not more than  
19 a certain rate under certain circumstances; providing that certain assessments  
20 for certain taxable years may not be enforced under certain circumstances;  
21 making the provisions of this Act severable; providing for the effective date and  
22 application of this Act; and generally relating to tax administration and  
23 compliance.

24 BY adding to  
25 Article - Tax - General  
26 Section 10-109, 10-306.1, and 10-725  
27 Annotated Code of Maryland

1 (1997 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Tax - General

4 Section 10-804(e)(3)

5 Annotated Code of Maryland

6 (1997 Replacement Volume and 2003 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Tax - General**

10 10-109.

11 (A) ~~FOR ORGANIZATIONS, TRADES, OR BUSINESSES DOING BUSINESS IN THE~~  
12 ~~STATE OF MARYLAND,~~ THE COMPTROLLER MAY DISTRIBUTE, APPORTION, OR  
13 ALLOCATE GROSS INCOME, DEDUCTIONS, CREDITS, OR ALLOWANCES BETWEEN AND  
14 AMONG TWO OR MORE ORGANIZATIONS, TRADES, OR BUSINESSES, WHETHER OR NOT  
15 INCORPORATED, WHETHER OR NOT ORGANIZED IN THE UNITED STATES, AND  
16 WHETHER OR NOT AFFILIATED, IF:

17 (1) THE ORGANIZATIONS, TRADES, OR BUSINESSES ARE OWNED OR  
18 CONTROLLED DIRECTLY OR INDIRECTLY BY THE SAME INTERESTS WITHIN THE  
19 MEANING OF § 482 OF THE INTERNAL REVENUE CODE; AND

20 (2) THE COMPTROLLER DETERMINES THAT THE DISTRIBUTION,  
21 APPORTIONMENT, OR ALLOCATION IS NECESSARY IN ORDER TO REFLECT AN ARM'S  
22 LENGTH STANDARD WITHIN THE MEANING OF § 1.482-1 OF THE REGULATIONS OF  
23 THE INTERNAL REVENUE SERVICE OF THE U.S. TREASURY AND TO REFLECT  
24 CLEARLY THE INCOME OF THOSE ORGANIZATIONS, TRADES, OR BUSINESSES.

25 (B) THE COMPTROLLER SHALL APPLY THE ADMINISTRATIVE AND JUDICIAL  
26 INTERPRETATIONS OF § 482 OF THE INTERNAL REVENUE CODE IN ADMINISTERING  
27 THIS SECTION.

28 10-306.1.

29 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
30 INDICATED.

31 (2) "BANK" MEANS:

32 (I) A BANK HOLDING COMPANY AS DEFINED IN THE FEDERAL  
33 BANK HOLDING COMPANY ACT OF 1956, AS AMENDED, OR A BANK, TRUST COMPANY,  
34 SAVINGS BANK, OR SAVINGS AND LOAN ASSOCIATION INCORPORATED OR  
35 CHARTERED UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED  
36 STATES; OR

1 (II) A SUBSIDIARY OR AFFILIATE OF AN ENTITY DESCRIBED IN  
2 ITEM (I) OF THIS PARAGRAPH.

3 (3) "INTANGIBLE EXPENSE" MEANS:

4 (I) AN EXPENSE, LOSS, OR COST FOR, RELATED TO, OR IN  
5 CONNECTION DIRECTLY OR INDIRECTLY WITH THE DIRECT OR INDIRECT  
6 ACQUISITION, USE, MAINTENANCE, MANAGEMENT, OWNERSHIP, SALE, EXCHANGE,  
7 OR ANY OTHER DISPOSITION OF INTANGIBLE PROPERTY, TO THE EXTENT THE  
8 EXPENSE, LOSS, OR COST IS ALLOWED AS A DEDUCTION OR COST IN DETERMINING  
9 TAXABLE INCOME FOR THE TAXABLE YEAR UNDER THE INTERNAL REVENUE CODE;

10 (II) A LOSS RELATED TO OR INCURRED IN CONNECTION DIRECTLY  
11 OR INDIRECTLY WITH FACTORING TRANSACTIONS OR DISCOUNTING TRANSACTIONS;

12 (III) A ROYALTY, PATENT, TECHNICAL, OR COPYRIGHT FEE;

13 (IV) A LICENSING FEE; OR

14 (V) ANY OTHER SIMILAR EXPENSE OR COST.

15 (4) "INTANGIBLE PROPERTY" MEANS PATENTS, PATENT APPLICATIONS,  
16 TRADE NAMES, TRADEMARKS, SERVICE MARKS, COPYRIGHTS, AND SIMILAR TYPES  
17 OF INTANGIBLE ASSETS.

18 (5) "INTEREST EXPENSE" MEANS AN AMOUNT DIRECTLY OR INDIRECTLY  
19 ALLOWED AS A DEDUCTION UNDER § 163 OF THE INTERNAL REVENUE CODE FOR  
20 PURPOSES OF DETERMINING TAXABLE INCOME UNDER THE INTERNAL REVENUE  
21 CODE.

22 (6) "RELATED ENTITY" MEANS A PERSON THAT, UNDER THE  
23 ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IS:

24 (I) A STOCKHOLDER WHO IS AN INDIVIDUAL OR A MEMBER OF THE  
25 STOCKHOLDER'S FAMILY ENUMERATED IN § 318 OF THE INTERNAL REVENUE CODE,  
26 IF THE STOCKHOLDER AND THE MEMBERS OF THE STOCKHOLDER'S FAMILY OWN  
27 DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE,  
28 AT LEAST 50% OF THE VALUE OF THE TAXPAYER'S OUTSTANDING STOCK;

29 (II) A STOCKHOLDER OR A STOCKHOLDER'S PARTNERSHIP,  
30 LIMITED LIABILITY COMPANY, ESTATE, TRUST, OR CORPORATION, IF THE  
31 STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIP, LIMITED LIABILITY  
32 COMPANY, ESTATE, TRUST, OR CORPORATION OWN DIRECTLY, INDIRECTLY,  
33 BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST 50% OF THE  
34 VALUE OF THE TAXPAYER'S OUTSTANDING STOCK; OR

35 (III) A CORPORATION OR A PARTY RELATED TO THE CORPORATION  
36 IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE  
37 CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER  
38 THE ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IF THE

1 TAXPAYER OWNS DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, AT  
2 LEAST 50% OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK.

3 (7) "RELATED MEMBER" MEANS A PERSON THAT, WITH RESPECT TO THE  
4 TAXPAYER DURING ALL OR ANY PORTION OF THE TAXABLE YEAR, IS:

5 (I) A RELATED ENTITY;

6 (II) A COMPONENT MEMBER, AS DEFINED IN § 1563(B) OF THE  
7 INTERNAL REVENUE CODE; OR

8 (III) A PERSON TO OR FROM WHOM THERE IS ATTRIBUTION OF  
9 STOCK OWNERSHIP IN ACCORDANCE WITH § 1563(E) OF THE INTERNAL REVENUE  
10 CODE.

11 (B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN ADDITION  
12 TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306 OF THIS SUBTITLE, THE  
13 AMOUNTS UNDER PARAGRAPH (2) OF THIS SUBSECTION ARE ADDED TO THE  
14 FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND  
15 MODIFIED INCOME.

16 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY  
17 OTHERWISE DEDUCTIBLE INTEREST EXPENSE OR INTANGIBLE EXPENSE IF THE  
18 INTEREST EXPENSE OR INTANGIBLE EXPENSE IS DIRECTLY OR INDIRECTLY PAID,  
19 ACCRUED, OR INCURRED TO, OR IN CONNECTION DIRECTLY OR INDIRECTLY WITH  
20 ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH, ONE OR MORE RELATED  
21 MEMBERS.

22 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES  
23 NOT APPLY TO ANY PORTION OF THE INTEREST EXPENSE OR INTANGIBLE EXPENSE  
24 TO THE EXTENT THAT THE CORPORATION ESTABLISHES, AS DETERMINED BY THE  
25 COMPTROLLER, THAT:

26 (1) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST  
27 EXPENSE OR INTANGIBLE EXPENSE BETWEEN THE CORPORATION AND THE  
28 RELATED MEMBER DID NOT HAVE AS A PRINCIPAL PURPOSE THE AVOIDANCE OF  
29 ANY PORTION OF THE TAX DUE UNDER THIS TITLE;

30 (2) THE INTEREST EXPENSE OR INTANGIBLE EXPENSE WAS PAID  
31 PURSUANT TO ARM'S-LENGTH CONTRACTS AT AN ARM'S-LENGTH RATE OF INTEREST  
32 OR PRICE; AND

33 (3) (I) DURING THE SAME TAXABLE YEAR, THE RELATED MEMBER  
34 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED THE INTEREST EXPENSE  
35 OR INTANGIBLE EXPENSE TO A PERSON WHO IS NOT A RELATED MEMBER, ~~THE~~  
36 ~~INTEREST EXPENSE OR INTANGIBLE EXPENSE~~;

37 (II) 1. THE RELATED MEMBER WAS SUBJECT TO A TAX  
38 MEASURED BY ITS NET INCOME OR RECEIPTS IN THIS STATE ~~AND OTHER STATES OR~~  
39 ~~POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS, IN ANOTHER STATE OR~~



1                   (I)     THE EFFECTIVE RATE OF TAX IMPOSED BY A JURISDICTION IS  
2 THE STATUTORY RATE MULTIPLIED BY THE APPLICABLE APPORTIONMENT RATE;  
3 AND

4                   (II)    THE EFFECTIVE RATE OF TAX IMPOSED IN THE AGGREGATE IS  
5 THE SUM OF THE EFFECTIVE RATES OF TAX IMPOSED BY ALL JURISDICTIONS WHERE  
6 THE RELATED MEMBER IS SUBJECT TO TAX AND WHERE THE MEASURE OF THE TAX  
7 IMPOSED INCLUDED THE PAYMENT.

8                   (2)     EVEN IF THE PAYMENT IS NOT INCLUDED IN THE RELATED  
9 MEMBER'S INCOME FOR PURPOSES OF A COMBINED OR CONSOLIDATED RETURN  
10 FILED IN ANOTHER JURISDICTION, THE MEASURE OF THE TAX IMPOSED BY THAT  
11 JURISDICTION INCLUDES THE INTEREST EXPENSE OR INTANGIBLE EXPENSE FOR  
12 PURPOSES OF SUBSECTION (C)(3) OF THIS SECTION IF:

13                   (I)     THE INCOME OF THE CORPORATION THAT PAID, ACCRUED, OR  
14 INCURRED THE EXPENSE IS INCLUDED IN THE COMBINED OR CONSOLIDATED  
15 RETURN THAT ALSO INCLUDES THE RELATED MEMBER; AND

16                   (II)    THE PAYMENT IS NOT DEDUCTED BY THE PAYOR  
17 CORPORATION FOR PURPOSES OF THE COMBINED OR CONSOLIDATED RETURN.

18     ~~(D)~~    (F)     THIS SECTION MAY NOT BE CONSTRUED:

19                   (1)     TO REQUIRE A CORPORATION TO ADD TO ITS NET INCOME MORE  
20 THAN ONCE ANY AMOUNT OF INTEREST EXPENSE OR INTANGIBLE EXPENSE THAT  
21 THE CORPORATION PAYS, ACCRUES, OR INCURS TO A RELATED MEMBER; OR

22                   (2)     TO LIMIT OR NEGATE ANY OTHER AUTHORITY PROVIDED TO THE  
23 COMPTROLLER UNDER THIS ARTICLE, INCLUDING:

24                   (I)     THE AUTHORITY TO MAKE ADJUSTMENTS UNDER § 10-109 OR §  
25 10-402(D) OF THIS TITLE; OR

26                   (II)    THE AUTHORITY TO ENTER INTO AGREEMENTS AND  
27 COMPROMISES OTHERWISE ALLOWED BY LAW.

28     ~~(E)~~    (G)     THE COMPTROLLER SHALL ADOPT ANY REGULATIONS THAT ARE  
29 NECESSARY OR APPROPRIATE TO IMPLEMENT THIS SECTION.

30 10-725.

31     (A)    (1)     IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
32 INDICATED.

33                   (2)     "~~PAYEE CORPORATION~~" MEANS A CORPORATION PERSON THAT HAS  
34 RECEIVED PAYMENTS OF ROYALTIES, INTEREST, OR SIMILAR INCOME FROM  
35 INTANGIBLES FROM A RELATED MEMBER.

1 (3) "RELATED MEMBER" HAS THE SAME MEANING AS SET FORTH IN §  
2 10-306.1 OF THIS TITLE.

3 (B) A PAYEE ~~CORPORATION~~ MAY CLAIM THE CREDIT DESCRIBED IN  
4 SUBSECTION (C) OF THIS SECTION IF, FOR THE SAME TAXABLE YEAR, THE RELATED  
5 MEMBER THAT PAID TO THE PAYEE ~~CORPORATION~~ THE ROYALTIES, INTEREST, OR  
6 SIMILAR INCOME FROM INTANGIBLES:

7 (1) IS SUBJECT TO THE ADDITION MODIFICATION SET FORTH IN §  
8 10-306.1 OF THIS TITLE; AND

9 (2) PAID TO THE COMPTROLLER THE FULL AMOUNT OF MARYLAND  
10 CORPORATION INCOME TAX DEVELOPED ON THE MARYLAND INCOME TAX RETURN  
11 ON WHICH THE ADDITION MODIFICATION SET FORTH IN § 10-306.1 OF THIS TITLE  
12 WAS INCLUDED.

13 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE AMOUNT OF  
14 THE CREDIT ALLOWED UNDER SUBSECTION (B) OF THIS SECTION IS EQUAL TO THE  
15 MARYLAND INCOME TAX LIABILITY OF THE RELATED MEMBER THAT PAID THE  
16 ROYALTIES, INTEREST, OR SIMILAR INCOME FROM INTANGIBLES TO THE PAYEE  
17 ~~CORPORATION~~, AS COMPUTED ON ITS MARYLAND INCOME TAX RETURN FILED WITH  
18 THE COMPTROLLER, REDUCED BY THE MARYLAND INCOME TAX LIABILITY OF THE  
19 RELATED MEMBER THAT PAID THE ROYALTIES, INTEREST, OR SIMILAR INCOME  
20 FROM INTANGIBLES TO THE PAYEE ~~CORPORATION~~, COMPUTED WITHOUT REGARD  
21 TO THE ADDITION MODIFICATION REQUIRED IN § 10-306.1 OF THIS TITLE.

22 (2) (I) FOR ANY TAXABLE YEAR, THE CREDIT ALLOWED UNDER THIS  
23 SECTION MAY NOT EXCEED THE STATE INCOME TAX LIABILITY OF THE PAYEE FOR  
24 THAT TAXABLE YEAR, CALCULATED BEFORE THE APPLICATION OF THE CREDIT  
25 ALLOWED UNDER THIS SECTION AND THE CREDITS ALLOWED UNDER §§ 10-701 AND  
26 10-701.1 OF THIS SUBTITLE BUT AFTER APPLICATION OF ANY OTHER CREDITS  
27 ALLOWED UNDER THIS SUBTITLE.

28 (II) THE UNUSED AMOUNT OF THE CREDIT FOR ANY TAXABLE YEAR  
29 MAY NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.

30 (D) THE COMPTROLLER SHALL BY REGULATION PROVIDE FOR THE  
31 APPLICATION OF THE CREDIT UNDER THIS SECTION IN THE CASE OF A PAYEE THAT  
32 IS AN S CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER  
33 ENTITY TREATED AS A PARTNERSHIP FOR TAX PURPOSES.

34 10-804.

35 (e) Each person required under this subtitle to file an income tax return or  
36 estimated income tax declaration or return shall:

37 (3) attach to an income tax return or otherwise file with the Comptroller  
38 any records or statements that the Comptroller requires, including:

1 (i) for an individual who has income tax withheld from salary,  
 2 wages, or other compensation for personal services, or other payments, a copy of the  
 3 statement from the person who withholds the tax that states:

4 1. the amount of salary, wages, or other compensation for  
 5 personal services paid and the income tax withheld; or

6 2. the amount of payments made and the income tax  
 7 withheld; [and]

8 (ii) a copy of the federal income tax return:

9 1. for a corporation; and

10 2. if the Comptroller requests, for an individual; AND

11 (III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT  
 12 IS A MEMBER OF AN AFFILIATED GROUP OR CONTROLLED GROUP UNDER § 1504 OR §  
 13 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTERMEMBER COSTS  
 14 OR EXPENSES AND ALL INTERMEMBER SALES, EXCHANGES, OR OTHER  
 15 TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE  
 16 YEAR.

17 SECTION 2. AND BE IT FURTHER ENACTED, That:

18 (a) all corporations required to make the addition to federal taxable income set  
 19 forth in § 10-306.1 of the Tax - General Article shall make estimated tax payments  
 20 under § 10-821 of the Tax - General Article that reflect any increased Maryland  
 21 corporation income tax liability resulting from the addition; and

22 (b) notwithstanding the provisions of §§ 13-602 and 13-702 of the Tax -  
 23 General Article, with respect to those corporations required to make the addition to  
 24 federal taxable income set forth in § 10-306.1 of the Tax - General Article, for all  
 25 taxable years beginning in calendar year 2004 only, the payment of 110% or more of  
 26 the tax paid for the prior taxable year, reduced by the credit allowed under § 10-703  
 27 of the Tax - General Article, does not preclude the Comptroller from assessing:

28 (1) interest, under § 13-602 of the Tax - General Article, on unpaid tax;  
 29 and

30 (2) penalty, under § 13-702 of the Tax - General Article, on  
 31 underestimated tax.

32 SECTION 3. AND BE IT FURTHER ENACTED, That:

33 (a) The Comptroller shall administer a Settlement Period from July 1, 2004  
 34 through November 1, 2004.

35 (b) The Settlement Period shall be applicable to the Maryland corporation  
 36 income tax that has been or may be assessed by the Comptroller on the basis of issues

1 that were ruled on by the Maryland Court of Appeals in the decisions in Comptroller  
2 of the Treasury v. SYL, Inc., and Comptroller of the Treasury v. Crown Cork & Seal  
3 Company (Delaware), Inc., 375 Md. 78 (2003), whether or not the assessment is or  
4 was issued before or after the date of the decisions.

5 (c) (1) A taxpayer may elect whether to have additional income tax  
6 calculated as though otherwise deductible payments were added back to the paying  
7 taxpayer's federal taxable income, or as though the receiving taxpayer were subject to  
8 the Maryland corporation income tax.

9 (2) The Maryland income tax may not be imposed more than once for the  
10 same transaction.

11 (d) The Comptroller shall waive all penalties attributable to the taxes paid  
12 during the Settlement Period.

13 (e) The Comptroller shall assess interest on taxes paid during the Settlement  
14 Period at a rate not to exceed 6.5% per year.

15 (f) If all taxes and related interest described above are paid during the  
16 Settlement Period for the taxpayer's taxable years beginning on or after January 1,  
17 1995 and ending on or before December 31, 2003, then no assessment for any taxable  
18 year beginning before January 1, 1995 may be enforced.

19 ~~SECTION 3.~~ 4. AND BE IT FURTHER ENACTED, That if any provision this  
20 Act or the application thereof to any person or circumstance is held invalid for any  
21 reason in a court of competent jurisdiction, the invalidity does not affect other  
22 provisions or any other application of this Act which can be given effect without the  
23 invalid provision or application, and for this purpose the provisions of this Act are  
24 declared severable.

25 SECTION 4. 5. AND BE IT FURTHER ENACTED, That this Act shall take  
26 effect July 1, 2004, and, except as provided in Section 3 of this Act, shall be applicable  
27 to all taxable years beginning after December 31, 2003.